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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re VERONIQUE P., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. VERONIQUE P., Defendant and Appellant.	F043917 (Super. Ct. No. JW089034-04) **OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Charles B. Pfister and Jon E. Stuebbe, Judges.

Jean M. Marinovich, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Stan Cross and Barbara J. Moore, Deputy Attorneys General, for Plaintiff and Respondent.

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* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of Background and parts I and II.

Fourteen-year-old Veronique P. admitted that she committed a violation of Penal Code section 245, subdivision (a)(1), assault with a deadly weapon, and was found to come within the jurisdiction of the juvenile court within the meaning of Welfare and Institutions Code section 602.[1] She appeals, claiming the juvenile court did not take a proper waiver of rights prior to her admission, the court erred in committing her to the California Youth Authority (CYA), and the court erred in designating her offense as falling within section 707, subdivision (b), because she was 14 years old when she committed the offense. We affirm the juvenile court orders and publish our discussion of the issue raised concerning section 707, subdivision (b).

BACKGROUND[*]

Veronique was born in November of 1988. She first came to the attention of the juvenile court at the age of 10. She took $500 or more of her mother's cash. A petition was filed alleging that she committed grand theft, a violation of Penal Code section 487, subdivision (a). Veronique was advised of her constitutional rights and waived them. She admitted a misdemeanor theft violation, and the petition seeking to adjudge her to fall within section 602 was found to be true.

In July of 1999, Veronique was given probation and was housed in juvenile hall pending placement. Her mother did not want Veronique placed with her because the mother could not control her. Veronique was placed in four or more group homes; each placement was terminated shortly after it began because Veronique refused to be compliant and behave. In the interim she was housed in juvenile hall where she also

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[1] All future code references are to the Welfare and Institutions Code unless otherwise noted.

[*] See footnote on page 1, *ante.*

experienced difficulties. Veronique was screened and rejected by 35 placement facilities. In April of 2001 Veronique was placed in the home of her adult sister.

On May 1, 2001, a new petition was filed alleging that Veronique had committed a second degree burglary by entering a church with intent to commit a theft. She was advised of her rights and waived them, admitting to a lesser charge of trespass. She was released to the care of her mother; her sister no longer wanted to care for Veronique because she was out of control.

Veronique failed to make a scheduled court appearance in December of 2001 and a bench warrant was issued. A new petition was filed in January of 2002 alleging a violation of probation. Veronique was advised of her rights and waived them. She admitted the probation violation. She was committed to juvenile hall for a period of time. She made minimal efforts while committed and violated rules. From May of 2002 to September of 2002, Veronique served commitments at three separate group homes. Each of these commitments failed. Veronique ran away from the last two homes. Between the commitments, she was housed in juvenile hall.

Veronique was released to her parent's custody in January of 2003. On March 27, 2003, Veronique got into a verbal altercation with S.W. The altercation escalated when S.W. struck Veronique and walked away. Veronique then stabbed S.W. four times. S.W. required immediate surgery for her wounds and was hospitalized.

A section 602 petition was filed alleging that Veronique committed an attempted murder against S.W. with the use of a deadly weapon and also inflicted great bodily injury on S.W. In addition, it was alleged she committed assault with a deadly weapon and inflicted great bodily injury.

Veronique filed a written waiver of her rights. This waiver was also signed by her attorney. A hearing was held, and Veronique admitted the assault with a deadly weapon. All other allegations were dismissed. Veronique was committed to CYA for four years.

DISCUSSION

I. Waiver of Rights*

In exchange for an admission to one count of assault with a deadly weapon, the People agreed to dismiss the attempted murder charge contained in count 1, as well as the knife use enhancement and great bodily injury enhancements.

Veronique signed an advisal and waiver of rights form. She admitted count 2 of the petition, a violation of Penal Code section 245, subdivision (a)(1). The form contained all of the applicable rights, as well as an advisement of what could happen to her based on her admissions. She initialed each of these advisements separately. In addition, she initialed and signed the portion of the form that stated: "I understand each right listed above. I knowingly, intelligently, voluntarily and expressly waive and give up each of the rights in order to make the admissions, and to take advantage of the promises made to me."

The form also contained the following clause that was signed by Veronique's attorney: "I am the attorney of record for the minor, I have explained each provision of this form to my client, and I am satisfied that my client understands each provision. I join in the admission(s)."

At the readiness hearing the court indicated that it had received the waiver form. It stated to Veronique: "[D]o you understand and give up all of the rights set forth on this waiver of rights form that you've signed and initialed, and do you understand the consequences--do you understand the consequences of making this admission?" Veronique replied, "Yes, sir."

The court asked Veronique: "And as to Count 2 of the petition which alleges a felony violation of Penal Code 245 (A)(1), which is a form of assault with a weapon, do

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* See footnote on page 1, *ante*.

you admit that?" Veronique replied, "Yes, sir." Counsel stipulated to a factual basis. The court stated: "I find proper notice, and the information in the advisal of rights form to be true. The minor understands and voluntarily waives the constitutional rights and understands the consequences of the allegations and admissions. There is a factual basis for the admission, which is freely and voluntarily made, is true, and falls under W & I 602." The matter was referred to the probation department.

California Rules of Court, rule 1487 provides in pertinent part:

"(a) [Petition read and explained (§ 700)] At the beginning of the jurisdiction hearing, the petition shall be read to those present. On request of the child, or the parent, guardian, or adult relative, the court shall explain the meaning and contents of the petition and the nature of the hearing, its procedures and possible consequences.

"(b) [Rights explained (§ 702.5)] After giving the advice required by rule 1412, the court shall advise those present of each of the following rights of the child:

"(1) The right to a hearing by the court on the issues raised by the petition;

"(2) The right to assert the privilege against self-incrimination;

"(3) The right to confront and to cross-examine any witness called to testify against the child; and

"(4) The right to use the process of the court to compel the attendance of witnesses on the child's behalf.

"(c) [Admission of allegations; prerequisites to acceptance] The court shall then inquire whether the child intends to admit or deny the allegations of the petition. If the child neither admits nor denies the allegations, the court shall state on the record that the child does not admit the allegations. If the child wishes to admit the allegations, the court shall first find and state on the record that it is satisfied that the child understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in subdivision (b).

"(d) [Consent of counsel -- child must admit] Counsel for the child must consent to the admission, which shall be made by the child personally."

Veronique claims the juvenile court failed to find that she understood the nature of the allegations against her or that she understood and gave up her specific constitutional rights. She argues that her plea did not satisfy due process or the requirements of California Rules of Court, rule 1487. In particular she contends that the dialogue between the court and Veronique did not demonstrate that she actually understood her rights or the factual basis for her admission and the consequences of the admission, particularly in the context of her age and her mental challenges. Veronique points out that the court never asked her or her counsel whether it was true that counsel explained each provision in the form to her. She concludes that it cannot be said that the plea was voluntary and intelligent under all of the circumstances, including her age, her lack of experience or sophistication, and her mental and educational challenges. Because she denied guilt to the probation officer, she argues it is reasonably probable that she would not have admitted the charges if she understood the nature of the allegations.

"It is now well established law that juvenile court proceedings, where a minor may be adjudged a delinquent and subjected to detention …'"must measure up to the essentials of due process …."' (*In re Michael M.* (1970) 11 Cal.App.3d 741, 743.) "When a criminal defendant chooses to plead guilty …, both the United States Supreme Court and this court [California Supreme Court] have required that the defendant be advised on the record that, by pleading, the defendant forfeits the constitutional rights to a jury trial, to confront and cross-examine the People's witnesses, and to be free from compelled self-incrimination. (*Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.) In addition, this court has required, as a judicially declared rule of state criminal procedure, that a pleading defendant also be advised of the direct consequences of his plea. [Citations.]" (*People v. Gurule* (2002) 28 Cal.4th 557, 633-634.) "The *Boykin-Tahl* protections afforded an accused, other than the right of trial by

jury, are available to juveniles charged pursuant to the Juvenile Court Law, as proceedings thereunder may result in a substantial deprivation of liberty analogous to incarceration for crime." (*In re Ronald E.* (1977) 19 Cal.3d 315, 321.)

In adult criminal cases "a court may rely upon a defendant's validly executed waiver form as a proper substitute for a personal admonishment. [Citations.] 'Only if in questioning the defendant and his attorney the trial court has reason to believe the defendant does not fully comprehend his rights, must the trial court conduct further canvassing of the defendant to ensure a knowing and intelligent waiver of rights.'" (*People v. Panizzon* (1996) 13 Cal.4th 68, 83.)

The advisal and waiver of rights form signed by Veronique stated that in order to make the admissions and to take advantage of the promises made to her she knowingly, intelligently and voluntarily gave up each of the rights. Additionally the form reflects that the attorney explained each provision of the form to Veronique and was satisfied that she understood. There is no assertion that the form was incomplete or incorrect in any manner. The court personally asked Veronique if she understood and waived the rights as listed in the form and if she understood the consequences of her admission. Veronique replied that she did.

Veronique's aunt, mother, and grandmother were present, yet none of them raised any objections to the proceedings or asserted that Veronique was not capable of fully understanding what she was doing. Neither Veronique nor her counsel made any comments suggesting that Veronique did not comprehend what she was doing.

Although Veronique was only 14 at the time she made the admissions, she was not unsophisticated in the juvenile justice system. She was first involved in juvenile court at the age of 10. On at least three prior occasions she was advised of her constitutional rights and waived these rights before admitting she committed violations of the law.

Although her intellectual functioning and academic skills were impaired, when tested for her competency regarding the court proceedings she appeared to have a rational

mind and to appreciate the charges against her. She understood her legal difficulties and had the ability to assist counsel in her defense.

Consideration of the foregoing evidence leads us to conclude that the record in this case supports a finding that under the totality of the circumstances Veronique knowingly and intelligently waived her rights and admitted the allegation against her. In doing so we do not sanction the court's brevity when it accepted the minor's admission, but find that under these circumstances the court's haste had no effect on the outcome.

Veronique argues there is no basis for the court's finding that she understood the nature of the allegations. "[T]he record need only 'demonstrate' that petitioner understood the nature of the charge in order to foreclose any relief based on a claim that [s]he was not expressly advised thereof." (*In re Ronald E.*, *supra*, 19 Cal.3d at p. 324.) The petition filed against Veronique clearly and explicitly set for that she was charged with an assault upon S.W. with a deadly weapon, a knife. The form she signed stated that she understood the charges and had enough time to talk to her attorney about the matter. The minor spoke to the probation officer and stated that she fought with the victim but did not stab her. She was told that witnesses had come forward and said that she stabbed the victim. She said that the witnesses were liars. The trial court did not spell out the exact details of the crime but said Veronique was admitting a felony violation of Penal Code section 245, subdivision (a)(1), "a form of assault with a weapon." Although there was a stipulation to the facts constituting the crime, we find the record satisfactorily shows that Veronique had fair notice of what she was asked to admit.

Veronique argues the juvenile court's failure to comply with California Rules of Court, rule 1487 requires that the case be remanded for a new hearing with correct advisements. Respondent concedes the trial court did not comply with rule 1487, but argues any error was harmless.

In *In re Regina N.* (1981) 117 Cal.App.3d 577 the minor's attorney informed the court that Regina was willing to admit to a lesser charge of receiving stolen property

rather than the charge of burglary alleged in the petition. Counsel indicated that Regina and her mother understood the charge and understood that Regina would be giving up her trial rights. The court ordered that Regina complete and sign a voluntary admission form. Regina completed and signed the form, which advised her of the rights she was foregoing and stated that her admission was voluntary. The court asked Regina whether she signed and understood the form. She answered affirmatively. (*Id*. at pp. 581-582.)

At the dispositional hearing, Regina and her mother sought to withdraw Regina's admission. Regina admitted her presence during the criminal activities but denied participating. The juvenile court found there was a factual basis for Regina's admission and denied her request. (*In re Regina N.*, *supra*, 117 Cal.App.3d at p. 582.)

Regina appealed, claiming her admission was obtained in violation of her *Boykin/Tahl*[2] rights as codified and extended in California Rules of Court, rule 1354.[3] The appellate court found that the rule could not be complied with by use of a prepared form. (*In re Regina N.*, *supra*, 117 Cal.App.3d at pp. 582-585.)

Because the ascertainment of a factual basis for an admission is not constitutionally required, the appellate court found that Regina was required to show prejudice. It found that she carried this burden by demonstrating that the court failed to comply with the rule that was designed to assure that the minor understand the charges and procedures, combined with the fact that Regina put in issue her misunderstanding of the factual basis of the charges. (*In re Regina N.*, *supra*, 117 Cal.App.3d at p. 587.)

Here, as in *Regina N.*, the juvenile court relied on a written form and did not comply with the mandates of the rule that was designed to assure that a minor

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[2] *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

[3] California Rules of Court, rule 1354 was repealed July 1, 1989 and is now contained in rule 1487.

understands her rights and the consequences of her admission. But here, unlike in *Regina N.*, there is nothing in the record suggesting any misunderstanding. To the contrary, as previously discussed, the record clearly supports a finding that Veronique knowingly and intelligently waived her rights and understood the consequences of her admission.

We adhere to the ruling in *Regina N.* that the requirements of the rule cannot be met by signing a prepared form, and we caution the trial court to follow rule 1437. In this limited instance, the court's error does not require reversal.

II. Commitment to CYA*

The juvenile court committed Veronique to CYA. "The appellate court reviews a commitment decision for abuse of discretion, indulging all reasonable inferences to support the juvenile court's decision. [Citations.] Nonetheless, there must be evidence in the record demonstrating both a probable benefit to the minor by a CYA commitment and the inappropriateness or ineffectiveness of less restrictive alternatives. [Citations.] A CYA commitment may be considered, however, without previous resort to less restrictive placements. [Citations.]" (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.)

The probation officer recommended that Veronique be committed to CYA. Of foremost importance to this recommendation was the gravity and seriousness of the offense, Veronique's level of criminality, and her failure to accept responsibility for her actions. The officer believed that Veronique posed a risk to public safety if released back into the community. The officer noted that prior detentions in juvenile hall and placements in group homes have proven ineffective in deterring Veronique from criminal and gang-related behavior. Based on these considerations, the officer found that local programs would not be effective toward her rehabilitation and would not provide adequate public protection. The officer believed that Veronique would benefit by

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* See footnote on page 1, *ante*.

participating in educational, anger management and victim awareness classes; substance abuse counseling; vocational training; gang intervention programs; and counseling.

In addition to the probation officer's report, the trial court considered a psychological examination of Veronique. The psychologist described Veronique as a troubled youth with a long history of truancy and drug addiction as well as noncompliance with her psychiatric treatment. The psychologist did not think the Crossroads program would be effective in treating Veronique because the program's duration is too brief to address her extensive needs. Veronique needed psychological counseling. The psychologist suggested a CYA placement as a possibility; the concern being she would be in contact with juveniles with even greater behavioral problems.

At the disposition hearing, counsel for Veronique acknowledged her many problems in the juvenile court system but asked the court to consider the Crossroads program as the correct disposition. He pointed out that Veronique is dyslexic and has a low IQ. She has had a very troubled childhood. He asserted that Veronique needed treatment for her drug abuse, which she had never received. He urged the court to commit Veronique to Crossroads so she could receive appropriate psychological evaluation and treatment.

The People countered that Veronique's level of criminality and drug use is overwhelming for someone of her age. In addition, she has refused to comply with anything that has been tried to reform her. The People argued that Veronique is jeopardizing the public safety as well as her own safety. The People asserted the court had little choice in the matter and CYA was the only viable placement.

The probation officer spoke at the hearing, again emphasizing the seriousness of the behavior. He reported that Veronique's case was screened with a director of the Crossroads program and the director said that she was not an appropriate candidate based on the offense and her lengthy history. The officer believed that CYA would provide Veronique with the long-term programs that she needed.

The court stated it was not anxious to send someone of such a young age to CYA, recognizing that CYA is a very serious commitment. The court found that Veronique would benefit by the long-term treatment offered there and that the Crossroads program would not provide that for her. The court noted that Veronique had serious problems that needed to be dealt with in a serious way. In addition, the court commented on the seriousness of the offense and that Veronique came very close to killing the victim. The court committed Veronique to CYA.

Based on all of the above, it is clear the trial court did not abuse its discretion when it committed Veronique to CYA. The evidence supported a finding that she would benefit from the long-term programs at CYA and that other less restrictive placements were either not available or inappropriate.

III. Section 707, Subdivision (b) Finding

At the disposition hearing the court found that the offense, a violation of Penal Code section 245, subdivision (a)(1), falls within and is listed under section 707 subdivision (b). The minute order from the hearing states, "The minor is committed to California Youth Authority on Petition(s) attached hereto. Welfare and Institutions code section 707 (b) designations attached."

Veronique asserts the trial court erred in designating her offense as falling within section 707, subdivision (b) because that section applies to minors 16 year of age or older and she was only 14 when she committed the offense. We disagree.

"[A]ny individual less than 18 years of age who violates the criminal law comes within the jurisdiction of the juvenile court, which may adjudge such an individual a ward of the court. (§ 602, subd. (a).) A minor accused of a crime is subject to the juvenile court system, rather than the criminal court system, unless the minor is determined to be unfit for treatment under the juvenile court law or is accused of certain serious crimes." (*Manduley v. Superior Court* (2002) 27 Cal.4th 537, 548, fn. omitted.) Minors age 14 years and older who commit the most serious crimes (for example a

special circumstance murder where the victim was personally killed by the minor) are per se unfit for juvenile court. (§ 602, subd. (b).) All other questions of fitness are determined pursuant to section 707.

Section 707, subdivision (a) applies to minors 16 years of age or older. Under subdivision (a)(1), if the minor has not committed a crime listed in section 602, subdivision (b) or 707, subdivision (b), the People may make a motion for a determination of unfitness. Following submission of a report and any other evidence the juvenile court may find, based on listed criteria, that the minor is not a fit and proper subject to be dealt with under the juvenile court law. Section 707, subdivision (a)(2) allows the People to make a motion for determination of unfitness when the minor is alleged to have committed a felony offense and has been found to have committed certain previous offenses. A motion made under this subdivision raises a presumption of unfitness.

Section 707, subdivision (b) provides in pertinent part: "Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses: …" A list of numerous serious offenses follows.

Section 707, subdivision (c) provides in pertinent part: "With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness." A motion made under this section raises a presumption of unfitness.

Section 707, subdivision (d) "confers upon prosecutors the discretion to bring specified charges against certain minors directly in criminal court, without a prior

adjudication by the juvenile court that the minor is unfit for a disposition under the juvenile court law." (*Manduley v. Superior Court, supra,* 27 Cal.4th at p. 545.)

Veronique contends that "[s]ince the Legislature created two separate subdivisions in section 707 for 14+ minors and 16+ year-old minors, subdivisions (c) and (b) respectively, we must respect that distinction and not permit blanket designations of 14-year-old offenders under section 707 (b)." Veronique argues that the section 707 subdivision (b) designation could adversely affect Veronique's confinement in a way not intended by the Legislature.

The determination of fitness or unfitness for juvenile court is the primary purpose of section 707. Veronique's case proceeded in juvenile court without the People filing a motion for determination of fitness or unfitness. Thus, fitness is not an issue in this appeal.

Although a determination of fitness or unfitness for juvenile court is the primary purpose of section 707, subdivision (b) of that section contains a list of serious offenses. This list is referenced for multiple purposes throughout the Welfare and Institutions Code and is also found in the Penal Code.

For example section 607, subdivision (b), states that the juvenile court "may retain jurisdiction over any person who is found to be a person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 until that person attains the age of 25 years if the person was committed to the Department of the Youth Authority." Section 1769, subdivision (b) provides, "[e]very person committed to the Department of the Youth Authority by a juvenile court who has been found to be a person described in Section 602 by reason of the violation of any of the offenses listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707 shall be discharged upon the expiration of a two-year period of control or when the person reaches his or her

25th birthday, whichever occurs later, unless an order for further detention has been made by the committing court …."

In the case of *In re Tino V.* (2002) 101 Cal.App.4th 510, the argument that a 14-year-old minor who committed an offense on the list contained in section 707, subdivision (b), could not be subject to the extended commitment periods, as set forth above, in sections 607 and 1769 because section 707, subdivision (b) applied only to minors 16 years of age or older was rejected by the appellate court. "Both sections 607, subdivision (b) and 1769, subdivision (b) refer to the offenses in section 707, subdivision (b), but only to designate the offenses that trigger extended commitments. Section 607 and 1769 do not refer to section 707's 16-year age requirement." (*In re Tino V.* at p. 513.) A similar argument was rejected in *In re Julian O.* (1994) 27 Cal.App.4th 847, 851.

That the Legislature intended the list of crimes contained in section 707, subdivision (b), to serve as a reference list and to apply to minors younger than 16 is evidenced by statutes expressly applying the offenses listed in subdivision (b) of section 707 to minors 14 years of age or older. For example, section 625.3 provides in pertinent part that "a minor who is 14 years of age or older and who is taken into custody by a peace officer for the personal use of a firearm in the commission or attempted commission of a felony or any offense listed in subdivision (b) of Section 707 shall not be released until that minor is brought before a judicial officer." Similarly section 781 governs petitions for sealing juvenile court records; it provides in part that "the court shall not order the person's records sealed in any case in which the person has been found by the juvenile court to have committed an offense listed in subdivision (b) of Section 707 when he or she had attained 14 years of age or older."

The age limitation of section 707, subdivision (b) does not preclude a court from utilizing the list of crimes contained in section 707, subdivision (b) for other authorized purposes for minors who are younger than 16 years of age. The juvenile court here stated

that Veronique's offense falls within and is listed under section 707, subdivision (b). This was a correct finding and was merely a designation of the type of offense that Veronique committed regardless of her age. It was a necessary finding because that designation is relevant to other statutes that reference the list of offenses set forth in section 707, subdivision (b) as a prerequisite for certain actions.[4]

DISPOSITION

The orders of the juvenile court are affirmed.

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VARTABEDIAN, Acting P. J.

WE CONCUR:

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WISEMAN, J.

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CORNELL, J.

[4] In addition to the already mentioned statutes, other sections that reference the list of crimes in section 707, subdivision (b) include sections 653.5, 654.3, 727, 790, 827.2, 828.1, 1753.3, and 1767.1. Section 707, subdivision (b) is also referenced in the three strikes law. For a juvenile adjudication to qualify as a strike, one of the considerations is whether the prior offense is listed in subdivision (b) of section 707. (Pen. Code, § 667, subd. (d)(3)(B).) We note that a finding that a juvenile offense is a section 707, subdivision (b) offense does not, by itself, automatically qualify the offense as a serious felony within the meaning of the three strikes law. (*People v. Leng* (1999) 71 Cal.App.4th 1.)